IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

WP(C).No. 2777 of 2007(E)

OS.762/2006 of I ADDL.MUNSIFF COURT, NEYYATTINKARA
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PETITIONER:

M.BHASKARAN NAIR, KADAYARA VEEDU,
KATHIPARA, NOW RESIDING IN PANCHAMI,
EATHIPARA, NEYYATTINKARA.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS:
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1. K.S.SREEKUMAR, S/O.SREEDHARAN PILLAI,
SREENILAYAM, KATHIPARA, KOOTHALL P.O.,
VELLARADA VILLAGE.

2. K.S.SREEDEVI, D/O.SREEDHARAN PILLAI,
SREENILAYAM, KATHIPARA,
KOOTHALL P.O., VELLARADA VILLAGE.

BY ADV. SRI.S.V.RAJAN
SRI.S.ARUN RAJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 2777/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE PLAINT IN OS NO. 762/06 BEFORE THE MUNSIFF COURT, NEYYATTINKARA.

EXT.P2. COPY OF THE COUNTER AFFIDAVIT IN IA NO. 4211/05 IN OS NO. 762/06 BEFORE THE MUNSIFF COURT, NEYYATTINKARA.

EXT.P3. COPY OF THE IA NO. 5281/06 IN OS NO. 762/06 BEFORE THE MUNSIFF COURT, NEYYATTINKARA.

EXT.P4. COPY OF THE ORDER IN IA NO. 4211/06 IN OS NO. 762/2006 BEFORE THE MUNSIFF COURT, NEYYATTINKARA.

EXT.P5. COPY OF THE ORDER PASSED ON I.A. NO. 5281/06 TAKEN DOWN BY THE PETITIONER'S ADVOCATE.

EXT.P6. COPY OF THE COMMISSION REPORT IN O.S NO. 762/06 BEFORE THE MUNSIFF COURT, NEYYATTINKARA.

RESPONDENT'S EXHIBITS

EXT.R1A. COPY OF THE WRITTEN STATEMENT FILED BY THE IST DEFENDANT IN OS NO. 762/06 ON THE FILE OF THE SECOND ADDL. MUNSIFF COURT, NEYYATTINKARA.

True copy

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M.N.KRISHNAN, J

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W.P.(C) No.2777 OF 2007

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Dated this the 27th day of September 2007

JUDGMENT

This writ petition is filed for a direction to the Munsiff's Court, Neyyattinkara not to return the plaint on the basis of I.A.No.5281/2006 and for other consequential reliefs. Learned counsel for the petitioner submits before me that the suit as instituted was one for declaration of title and injunction. He also filed an application for injunction along with the suit.

2. Defendants entered appearance and filed a counter statement wherein they canvassed for the position that if the suit is properly valued it will go beyond the pecuniary jurisdiction of the court and they also moved an application with a request to the court to return the plaint to the plaintiffs for presentation before the appropriate court. I am informed that the said petition is still pending before the court and final orders are not passed. Meanwhile plaintiffs have also filed another application for amendment of the plaint, whereby they want to delete the prayer of declaratory relief. It is still pending. The question of payment of court fee will depend upon the result of the amendment application as well. If the amendment is allowed,

then the suit will have to be valued under Section 27(c) of the Court Fees Act. If disallowed, it may have to be done under Section 25(d)(ii) of the Court Fees Act and the modality of arriving at the market value of the property is also contemplated under Section 7 of the Court Fees Act. As the things stand today, the first point to be considered is regarding the amendment application. If there is any dispute regarding the correctness of the court fee under Section 27(c), it can be raised. If the question of pecuniary jurisdiction arise that also has to be considered. So, I direct the court below to consider the amendment application in advance and dispose it of within six weeks from today. Then depending upon the result of the petition, the court may also consider the question of pecuniary jurisdiction that is raised by the defendants.

With these observations, writ petition is disposed of.

M.N.KRISHNAN, JUDGE

Cdp/-